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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.917 OF 2004

M/s.Rupa Soap Industries & others Appellants
versus
Bank of Baroda Respondent

Mr.M.D.Sugavkar for appellants.
Mr.V.N.Tendulkar for respondent.

CORAM : DR.D.Y.CHANDRACHUD, J.

DATE : 06TH JULY 2007

PC :

1. The Trial Court dismissed the suit for recovery filed by the respondent bank, inter alia, holding that the claim was barred by limitation. The Appellate Court reversed the judgment of the Trial Court and came to the conclusion that the suit was in fact within limitation. The Appellate Court recorded a finding that the defendants had taken the loan and the plaintiff had duly proved the acknowledgement of debt executed by the defendants on 3rd August 1987 (Exhibit-42). The suit which was instituted on 29th November 1998 was consequently held to be within limitation.

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The claim of the bank has been decreed in the sum of Rs.1,30,527=39 Ps. together with simple interest @ 16% p.a. from the date of the suit until realisation.

2. At the hearing of the Second Appeal it has been urged on behalf of the appellant that the learned Trial Judge had taken a view that the acknowledgement that was relied upon by the bank was "suspicious" and consequently the Trial Court had declined to rely upon the same. The submission is that the acknowledgement was executed on 3rd August 1984 and consequently the suit must be held to be barred by limitation.

3. The Appellate Court has dealt with the question as to whether the acknowledgement at Exhibit-42 was executed in the year 1984 as contended by the appellant or in the year 1987 as contended by the bank. The loan was sanctioned on 27th August 1984 and the connected documents including the promissory note, hypothecation of book debts and the guarantee were executed on 27th August 1984. The contention of the appellant, as noted by the Appellate Court, was that the acknowledgement at Exhibit-42 was signed on the same day with other documents. The

Appellate Court noted that this acknowledgement would in such an event also bear the date of 27th August 1984, which was not the case. On perusal of the document the Appellate Court noted that it was written on 3rd August 1987 though at one place there was an erasure upon which the date was written as 3rd August 1987. The appellant had placing reliance on the erasure contended that the acknowledgement was in fact executed on 27th August 1984. The Appellate Court noted that this could not be so for the simple reason that the document would then have been executed not on 3rd August 1984 but on 27th August 1984. On a review of the evidence the Appellate Court has held that the document was executed, as a matter of fact, on 3rd August 1987.

4. Apart from the reasoning of the Appellate Court, there is one additional reason as to why this Court ought not to interfere in the Second Appeal. The first and foremost is that a finding on limitation raises a mixed question of law and facts. The view which has been formed by the Appellate Court is on the basis of the documentary evidence and unless the Court in a Second Appeal were of the view that the reasoning is perverse, there would be no reason to

interfere. Secondly, the acknowledgement of liability executed by the appellant refers to the factum of deposit of title deeds on 27th August 1984. A reference to the deposit of title deeds on 27th August 1984 could not have been contained in a document executed prior thereto on 3rd August 1984. Therefore, there is intrinsic evidence to support the reasoning adopted by the Appellate Court.

5. However, while it would be proper to confirm the judgment of the Appellate Court, in my view, the ends of justice would warrant a reduction in the interest that is awarded by the Appellate Court. The Appellate Court has awarded interest @ 16% p.a. from the date of the suit till realisation. That part of the decree shall stand modified so as to provide for interest @ 12% p.a. from the date of the suit till realisation.

6. With the aforesaid modification confined only to the rate of interest, the Second Appeal stands disposed of.

7. In view of disposal of the Second Appeal, Civil Application No.136 of 2003 does not survive and is accordingly disposed of.

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(DR.D.Y.CHANDRACHUD, J.)